IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:27.03.2007

CORAM

THE HON'BLE MR.JUSTICE P.K.MISRA
and
THE HON'BLE MR.JUSTICE K.MOHAN RAM

WRIT APPEAL No.2190 of 1999 and
C.M.P.No.18354 of 1999 and
Writ Appeal Nos.1375 and 1376 of 2000

W.A.No.2190 of 1999:

R.Sowrirajan .. Appellant

-Vs.-

1. D.Kala
2. D.Ravichandran
3. D.Sivasankari (Minor)
   Rep. by mother & Guardian D.Kala,
4. State of Tamil Nadu
   Rep. by the Commissioner & Secretary to Government
   Education, Science & Technology Department,
   Fort St George, Chennai - 600 009.
5. Special Tahsildar & Land Acquisition Officer,
   Madras City Works,
   Madras Collectorate, Chennai - 600 001
   Previously The Special Deputy Collector
   of Land Acquisition, Madras City Works,
   Madras - 1. .. Respondents

Prayer:- Writ Appeal under clause 15 of the Letters Patent against the Order of this Court dated 28.11.1997 made in W.P.No.9880 of 1997 to call for the proceedings till passing of the award 4/97 dated 13.06.1997 by the Second Respondent, the Special Tahsildar (MRTS) and Land Acquisition Officer (City Works) Collector's Office, Chennai - 1, relating to the acquisition of the property comprised in T.S.No.42 Block No.26, at No.36, V.S.Mudali Street, Saidapet, Chennai - 15 and to quash the same by issue of Certiorari.

For Appellant : Mr. Sathish Parasaran
For Respondents : Mr. R.Subramanian, for R-1 to R-3.
Mr. P.Subramanian, G.A., for R-4 & R-5.

W.A.Nos.1375 & 1376 of 2000

1. D.Kala
2. D.Ravichandran
3. D.Sivasankari, Minor
   Rep. by mother & guardian, D.Kala .. Appellants in both the WAs

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-Vs.-

1. The State of Tamil Nadu
   Rep. by the Commissioner & Secretary,
   Education, Science & Technology Department,
   Fort St George, Chennai - 600 009.
2. Special Tahsildar & Land Acquisition Officer,
   Madras City Works,
   Madras Collectorate, Madras - 600 001
   (Previously The Special Deputy Collector
   of Land Acquisition, Madras City Works,
   Chennai - 1).
3. R.Sowrirajan, Tenant and representing
   Ganapathy National Middle School,
   Saidapet, Chennai - 600 015 .. Respondents in both the WAs

Prayer in W.A.No.1375 of 2000:- Writ Appeal under clause 15 of the Letters Patent against the Order of this Court dated 28.11.1997 made in W.P.No.9880 of 1997.

Prayer in W.A.No.1376 of 2000:- Writ Appeal under clause 15 of the Letters Patent to set-aside the this Court dated 28.11.1997 made in W.P.No.17218 of 1996 and W.P.No.9880 of 1997.

Prayer in WP.17218/1996 :

Filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records of Land Acquisition proceedings covered by Sec.9(3) notice dated 08.10.1996 based on Sec.4(1) notification dated 07.07.1982 and Sec.6 Declaration dated 18.06.1983 on the file of the Special Tahsildar and Land Acquisition Officer, previously the Special Deputy Collector for Land Acquisition, Madras City Works relating to the acquisition of the property at No.36 V.S.Mudali Street, Saidapet, Madras-15 and quash the same.

For Appellants in both the WAs : Mr. R.Subramanian
For Respondents in both the WAs : Mr. P.Subramanian, G.A., for R-1 & R-2.
Mr. Sathish Parasaran, for R-3.

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C O M M O N J U D G M E N T

(Judgment of the court was delivered by Justice K.Mohan Ram)

The facts are not in dispute. For the sake of convenience, the parties are referred to as per their ranking in the writ petitions.

2. The land, building and premises comprised in T.S.No.42, Block No.26 bearing Old No.33 was owned by late Duraikannan and on his death, his legal heirs, the petitioners, succeeded to the said property. The third respondent is a tenant in respect of the said property. Rent Control Proceedings were initiated against the third respondent for eviction and for fixation of fair rent. The order of eviction passed by

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the Rent Controller has become final and the fixation of fair rent is pending at the stage of revision. While dismissing the Special Leave Petition arising out of the eviction proceedings, the Apex Court directed that in case the acquisition is effected, the order of eviction will not operate against the tenant in possession.

3. When the eviction order was put into execution, the first respondent-State Government issued Section 4(1) notification under the Land Acquisition Act (hereinafter referred to as "the Act") in G.O.Ms.No.1357 (Education, Science and Technology) dated 18.06.1982 and the same was gazetted on 07.07.1982. After completion of the enquiry under Section 5-A of the Act, Section 6 declaration was issued in G.O.Ms.No.1134 (Education, Science and Technology), dated 18.06.1983 and the same was gazetted on 29.06.1983. The deceased Duraikannan challenged the land acquisition proceedings by filing W.P.No.6337 of 1983 and the same was allowed on 04.07.1986.

4. The third respondent preferred W.A.No.761 of 1986 against the order passed in W.P.No.6337 of 1983, but a Division Bench by its judgment dated 11.08.1986 dismissed Writ Appeal.

5. As against the Division Bench judgment of this Court, the third respondent-tenant preferred Civil Appeal No.2995 of 1986 and the Supreme Court by its order dated 02.09.1986 granted stay and dispossession of the third respondent and ultimately the Civil Appeal was allowed and the land acquisition proceeding was upheld by judgment dated 07.08.1986.

6. On 08.10.1996, a notice under Sections 9(3) and 10 of the Act was served on the petitioners calling upon them to put forth their claims and appear for an enquiry for passing the award. At that stage, the petitioners filed W.P.No.17218 of 1996 and an interim order of status-quo was passed on 21.11.1996. The said interim order was extended once for six weeks and thereafter it was not extended. Hence, the Land Acquisition Officer-the second respondent proceeded with the award enquiry and passed Award No.4 of 1997 on 12.06.1997 fixing a compensation of Rs.29,088/- including solatium.

7. At that stage, the petitioners filed W.P.No.9880 of 1997 to quash Award No.4 of 1997 dated 12.06.1997 and the said writ petition was admitted on 04.07.1997 and an order of interim stay was granted and the writ petition was directed to be posted along with W.P.No.17218 of 1996.

8. Before the Learned Single Judge, the writ petitioners contended that as no award had been passed within two years from the date of Section 6 declaration as contemplated under Section 11(A) of the Act, the entire proceedings stand abated or lapsed. The Learned Single Judge after elaborately considering the rival contentions held that the award had been passed well within the period prescribed and dismissed both the writ petitions. But the Learned Single Judge on the question of payment of compensation, instead of taking the value as on the original date of notification under Section 4(1) of the Act i.e., on 07.07.1982 proceeded to direct the payment of compensation with usual solatium and interest as if Section 4(1) Notification was issued on 12.06.1994 that is three years before the date of award i.e., 12.06.1997.

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9. Being aggrieved by the above said direction regarding compensation, the third respondent has filed W.A.No.2190 of 1999 against W.P.No.9880 of 1997. Against the dismissal of W.P.No.9880 of 1997 and W.P.No.17218 of 1996, the writ petitioners have filed W.A.Nos.1375 and 1376 of 2000 respectively. In W.A.Nos.1375 and 1376 of 2000, the main contention of the petitioners is that in W.P.No.6337 of 1983, an order of interim stay was granted on 26.07.1983 and the writ petition was allowed on 04.07.1986 and after 04.07.1986, the land owners-the petitioners had not taken any action and hence in terms of Section 11(A) of the Act, an award should have been passed within two years, after excluding the period from 26.07.1983 to 04.07.1986 and also the period between 04.07.1986 to 07.08.1996, but the learned Single Judge erroneously failed to exclude the period commencing from 26.07.1983 to 07.08.1996 and erred in holding that the award has been passed within two years from 24.09.1984 after excluding the period covered by the said orders.

10. Learned counsel for the writ petitioners further submitted that against the order dated 04.07.1986 allowing W.P.No.6337 of 1983 filed by the writ petitioners, the Government did not prefer any appeal but the third respondent who was the beneficiary alone filed the Writ Appeal and against the dismissal of the Writ Appeal also, the third respondent alone preferred the Civil Appeal before the Apex Court, though neither the writ appeal nor the civil appeal can be maintained at the instance of the beneficiary. He further submitted that when the Government had not chosen to challenge the order of this Court allowing the writ petition to keep the Land Acquisition Proceedings alive, it should be deemed that the Government had abandoned the land acquisition proceedings and therefore submitted that due to the filing of the appeals before the Division Bench and also before the Apex Court by the third respondent, the passing of the award had been delayed which had adversely affected the right and interest of the writ petitioners.

11. On the other hand, the contention of the third respondent is that the learned Single Judge after elaborately setting out the relevant dates has categorically found that though the writ petitioners did not take any steps after 04.07.1986, since the declaration under Section 6 had been quashed no award could be passed till the Supreme Court allowed the Civil Appeal on 07.08.1996. The third respondent further contended that the period commencing from 26.07.1983 to 07.08.1996 has been rightly excluded by the learned Single Judge in terms of proviso to Section 11(A) of the Act.

12. We have heard Mr.Sathish Parasaran learned counsel for the petitioner in W.P.No.9880 of 1997 (appellant in W.A.No.2190 of 1999) and Mr.R.Subramanian learned counsel for the third respondent (also third Respondent in W.A.No.2190 of 1999).

13. Learned counsel for the petitioners and the learned counsel for the third respondent reiterated the above said contentions put forth before the learned Single Judge. As rightly pointed out by the learned Single Judge from 26.07.1983 to 04.07.1986, during the pendency of said orders, no award could be passed. So also, on and after 04.07.1986 namely the date on which W.P.No.6337 of 1983 was allowed and till 07.08.1996, on

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which date the Apex Court ultimately allowed the Civil Appeal and dismissed W.P.No.6337 of 1983, the award could not have been passed. Therefore, it is crystal clear that the period from 26.07.1983 to 07.08.1996 has to be excluded as per the proviso to Section 11(A) of the Act, while computing the period within which the award had to be passed. The contention of the writ petitioners that nothing prevented the Land Acquisition Officer from passing the award as there was no impediment for the Land Acquisition Officer to pass the award does not merit acceptance. When Section 6 declaration has been quashed and when there is no valid declaration no award could be passed. Only when the Apex Court upheld the land acquisition proceedings, the land acquisition proceedings were revived and within two years from the date of coming into force of the amended Act, the award had been passed on 12.06.1997 and if the period of stay and the period of pendency of the Writ Appeal before this Court and Civil Appeal before the Apex Court are excluded, it should be held that the award had been passed within the stipulated period. Therefore, we are in full agreement with the reasoning of the learned Single Judge and we do not find any merit in the contentions of the writ petitioners and hence the writ appeals filed by them are liable to be dismissed.

14. The third respondent, as stated above, has filed W.A.No.2190 of 1999 as against the order dated 28.11.1997 passed in W.P.No.9880 of 1997 directing the fixation of payment of compensation with usual solatium and interest. Learned counsel for the third respondent submitted that the learned Single Judge having rejected the main contentions of the writ petitioners ought not to have introduced the deeming fiction and the principles of equity to defeat the purpose and intent behind the orders passed by this Court and the Honourable Apex Court confirming and upholding the Land Acquisition Proceedings. Learned counsel further submitted that the entire delay in the conclusion of the Land Acquisition Proceedings was attributable solely on the writ petitioners, but the learned Single Judge has erroneously proceeded to attribute the cause for the delay on the third respondent, in view of the filing of the writ appeal and Civil Appeal. Learned counsel further submitted that there is absolutely no justification which called for invocation of the principle 'actus curiae neminem gravabit' and further submitted that the decisions reported in 1994 (1) S.C.C. 44 (Ram Chand and Others Vs. Union of India and others) and 1991 (4) S.C.C. 584 (Union Carbide Corporation and others Vs. Union of India and others) ought not to have been relied upon by the Learned Single Judge as directions for payment of higher compensation by advancing the date of 4(1) notification had been passed by the Apex Court in the exercise of its power conferred under Article 142 of the Constitution of India and such power is not available to the High Court while exercising power under Article 226 of the Constitution of India. Learned counsel further submitted that the facts and circumstances explained in the above said decisions were altogether different and were not in any manner relatable to the facts of the instant case.

15. Per contra, Mr.Subramanian, learned counsel for the writ petitioners submitted that the principles laid down in 1994 (1) S.C.C. 44 (referred to supra) and 1991 (4) S.C.C. 584 (referred to supra) are squarely applicable to the facts of the instant case and when the facts and circumstances of a case warrant that great injustice has been done to the land owners, because of the undue delay in completion of the land

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acquisition proceedings, with a view to do complete justice between the parties, the High Court also has got power under Article 226 of the Constitution of India to pass appropriate orders to do complete justice between the parties. According to the learned counsel, the Learned Single Judge has properly considered the said decisions and has applied the principles laid down by the Apex Court, as the facts of the instant case warranted the advancement of the date of 4(1) notification to enable the writ petitioners to get a 'just compensation' for the valuable property which has been acquired.

16. In support of his contentions, the learned counsel for the third respondent relied upon a decision of the Apex Court reported in 1999 (9) S.C.C. 40 (C.M.Singh Vs. H.P.Krishi Vishva Vidyalaya and others). In the said decision, the Apex Court has observed as follows:-

> "5. ..... Apart therefrom, the language employed by this Court in Rekha Chaturvedi case 1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : 1993 25 ATC 234 would suggest that this Court was employing the powers conferred on it under Article 142 to do complete justice. The High Court does not have such powers. Having found on merits in favour of the writ petitioners we do not think that the High Court was justified in declining any relief to them".

17. We have to consider the question as to whether the learned Single Judge is right in applying the ratio of the decision reported in 1994 (1) S.C.C. 44 (referred to supra) to the facts of this case. The Learned Single Judge has extracted relevant portion of the said decision in paragraph 46 of the judgment and has relied upon the following observation of the Apex Court, viz.,:-

> "The High Court or this Court, can grant a modified relief taking into consideration the injury caused to the claimants by the inaction on the part of the respondents and direct payment of any additional amount, in exercise of power under Article 226 or Article 32 of the Constitution".

But the learned Single Judge, with respect, has failed to notice the following vital observation of the Honourable Apex Court in the very same passage extracted by the Learned Single Judge, viz.,

> "There appears to be some force in the contention of the petitioners that the object of respondents was to peg the price of the lands acquired from the different cultivators to a distant past and not to proceed further because if the awards had been made soon after the declarations under Section 6, respondents had to pay or tender the compensation to the claimants, which for some compulsion, respondents were not in a position to pay or tender them. But, nonetheless, the exercise of power in the facts and circumstances of the cases by the respondents has to be held to be against the spirit of the provisions of the Act, tending towards arbitrariness. In such a situation this Court in exercise of power under Article 32 and the High Court under Article 226, could have quashed the proceedings, the Delhi Administration and Delhi Development Authority have taken possession of the lands and even developments have been made, it shall not be proper exercise

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of discretion on the part of this Court to quash the proceedings because, in that event, it shall affect the public interest. Moreover, third party interests created in the meantime are also likely to be affected and such third parties are not impleaded. The relief of quashing the acquisition proceedings have become inappropriate due to the subsequent events, the grant of a modified relief, considered appropriate in the circumstances, would be the proper course to adopt". (Emphasis supplied)

A reading of the above said passage clearly shows that the Apex Court came to the conclusion that there were grounds to quash the acquisition proceedings, but taking into consideration the public interest and the creation of third party interest and the non-impleadment of such third parties, the Apex Court chose not to quash the proceedings, but instead granted a modified relief taking into consideration the injury caused to the claimants by the inaction on the part of the authorities and directed the payment of additional amount, but the fact situation in the instant case is totally different. It is settled law that the principle of law laid down by the Apex Court can be applied to a particular case only if the facts of the case are same but not otherwise. Learned counsel for the writ petitioners is unable to show any decision of the Apex Court, wherein the Apex Court, in exercise of its power under Article 142 of the Constitution of India, has enhanced the compensation by advancing the date of 4(1) notification even when the Apex Court had not found any defects in the land acquisition proceedings under challenge before it and upheld the same. The Apex Court has not enhanced the compensation by advancing the date of 4(1) notification even in a case where the land acquisition proceedings were upheld. It has to be pointed out that only when the Apex Court found some defects in the land acquisition proceedings and was of the opinion that the relief of quashing the land acquisition proceedings became inappropriate due to subsequent events, the grant of a modified relief was thought fit and accordingly the modified relief was granted. Therefore, in our considered view, the reasoning of the Learned Single Judge for granting enhanced compensation by advancing the date of 4(1) notification, even while upholding the land acquisition proceedings, is not correct.

18. Therefore when the learned Single Judge has chosen to reject the contention of the writ petitioners and dismiss the writ petitions, the learned Single Judge ought not to have introduced a fiction as if Section 4(1) notification was issued on 12.06.1994, when in fact Section 4(1) notification had been issued as early as on 07.07.1982. In the decision reported in 1995 (6) S.C.C. 749 (B.C.Chaturvedi Vs. Union of India and others), His Lordship Honourable Mr. Justice B.L.Hansaria in his concurring but separate judgment in paragraphs 23 and 26 has observed as follows:-

"23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by

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pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh Vs. State of Punjab (A.I.R. 1963 S.C. 1909) that the High Courts too can exercise power of review, which inheres in every Court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a Court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter".

26. I had expressed my unhappiness qua the first facet of the case, as Chief Justice of the Orissa High Court in paras 20 and 21 of Krishna Chandra Pallai Vs. Union of India (A.I.R. 1992 Ori. 261 (FB)), by asking why the power of doing complete justice has been denied to the High Courts. I feel happy that I have been able to state, as a Judge of the Apex Court, that the High Courts too are to do complete justice. This is also the result of what has been held in the leading judgment."

19. In the decision reported in A.I.R. 1992 Orissa 261 (FB) (Krishna Chandra Pallai Vs. Union of India and another), in paragraph 21, the Full Bench has observed as follows:-

"21. So, merely because there is no express provision in the Constitution giving the High Courts power to pass such orders as may be deemed necessary for doing "complete justice" in any case or matter pending before it, the same should not be clinching. It is for consideration whether such a power should not be conceded to the High Court, because a very small segment of the Indian litigants can afford to fight legal battle in the Supreme Court, inter alia, because of the expenditure involved. So, a common man would be deprived of getting "complete justice", if the High Courts are not empowers to do so."

20. The above said decision of the Apex Court and the Orissa High Court also clearly shows that the power available to the Apex Court under Article 142 of the Constitution of India to pass appropriate orders to do complete justice between the parties is not available to the High Court while exercising power under Article 226 of the Constitution of India.

21. It is true, as pointed out by the learned Single Judge, the market value of the land acquired as on the date of the judgment of the Apex Court namely on 07.08.1996 would not be less than Rs.20 lakhs per ground and with the sum of Rs.29,088/- awarded as compensation the writ petitioners would not be in a position to purchase even a few square feet of land in the same area. But having upheld the validity of the award passed and dismissed the writ petitions, and also when similar powers as available to the Supreme Court of India under Article 142 of the Constitution of India are not available to this Court, this Court can only express its sympathy to the writ petitioners. We too can only sympathize with the writ petitioners but as we are bound by the law laid down by the Apex Court, we are unable to accept the reasoning of the learned Single

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Judge and therefore we are constrained to set-aside that part of the judgment of the learned Single Judge directing fixation of higher compensation by fixing the date of 4(1) notification as 12.06.1994.

22. We would also like to point out that the principle of 'actus curiae neminem gravabit' could not be applied to the facts of this case. No doubt the proceedings were pending before this Court and before the Apex Court for a long time and while the Government had not chosen to challenge the order of the Learned Single Judge quashing the land acquisition proceedings, it was only the beneficiary who challenged the proceedings before the Division Bench of this Court and as well as before the Apex Court and though in law the contention of the learned counsel for the petitioners that the beneficiaries could not have filed the writ appeal before this Court and the Civil Appeal before the Apex Court, seems to be acceptable, since the Honourable Apex Court has entertained the Civil Appeal and upheld the acquisition proceedings, it is not open to the writ petitioners to advance such an argument in the above writ appeals.

23. For the reasons stated above, the Writ Appeal Nos.1375 and 1376 of 1999 are dismissed and Writ Appeal No.2190 of 1999 is allowed. However, there will be no order as to costs. Consequently the connected CMP is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

srk

To

1. The Commissioner & Secretary to Government Education,
State of Tamil Nadu
Science & Technology Department,
Fort St George, Chennai - 600 009.

2. The Special Tahsildar & Land Acquisition Officer,
Madras City Works,
Madras Collectorate, Chennai - 600 001
Previously The Special Deputy Collector
of Land Acquisition, Madras City Works,
Chennai - 1.

1 cc To Mr.Satish Parasaran, Advocate, SR.19482,19484.
1 cc To Mr.P.Veeraraghavan, Advocate, SR.20038.
1 cc To The Government Pleader, SR.19864.

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